IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WA.No. 611 of 2006(B)

AGAINST THE JUDGEMENT IN OP.14586/1999 Dated 25/11/2005
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APPELLANT: 3RD RESPONDENT

MANAGER, SARASWATHI VILASAM U.P.SCHOOL,
MUTHATHI, P.O.MUTHATHI,
VIA.PAYYANNUR, KANNUR DISTRICT.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS: PETITIONER-RESPONDENTS 1,2 & 4 IN OP
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1. PRIYESH ARAMANA, S/O.LATE DAMODARAN,
KANDOTH.P.O,
PAYYANNUR VIA., KANNUR DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

3. THE ASSISTANT EDUCATIONAL OFFICER,
PAYYANNUR.

4. P.JAYARAJ,
KUNNARU, KARANTHAT.P.O,
RAMANTHALI VIA., KANNUR DISTRICT.

BY GOVERNMENT PLEADER SRI. BENNY GERVASIS FOR R2 & R3
SRI.KALEESWARAM RAJ IFOR R1

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 14/06/2007, THE COURT ON 3/7/2007 DELIVERED THE
FOLLOWING:,

K.S.Radhakrishnan
&
Antony Dominic, JJ.
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W.A.No.611 of 2006
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Dated this the 3rd day of July, 2007.

JUDGMENT

Antony Dominic,J.

First respondent herein, whose father late Sri.Damodaran was a Peon of an aided School of which the appellant is the Manager. While in service his father expired on 4.9.1998 and the first respondent filed Exts.P2 and P3 representations seeking appointment in the School on compassionate grounds. Since a decision on his representations was not taken, he filed O.P.No.1554 of 1999 before this Court, which was disposed of by Ext.P4 judgment directing the appellant to consider the representation and pass orders thereon in accordance with law. Representation was considered and by Ext.P5, the request for appointment on compassionate ground was rejected stating that the deceased father of the first respondent was governed by the provisions contained in Chapter XXIV B of the Kerala Education Rules (hereinafter referred to as "K.E.R.") and unlike Rule 9 A providing for appointment on compassionate grounds under Chapter XXIV A of K.E.R., there was

no similar Rule in Chapter XXIV B of K.E.R. and hence the first respondent could not raise any claim for appointment under the Dying in Harness Scheme. Original Petition was therefore filed to quash Ext.P5 order and also for a direction to provide employment to the first respondent as a non-teaching staff in the School and also for a declaration that Rule 9 A occurring in Chapter XXIV A applies to the dependents of non-teaching staff governed by Chapter XXV B also, O.P.No.14586 of 1999 was filed by the first respondent also.

2. Government in their counter affidavit in the Original Petition have almost conceded that the first respondent is entitled to lay a valid claim for compassionate appointment. The first respondent also maintained the stand that though the deceased was governed by Chapter XXIV B of K.E.R., Government had vide G.O.(MS) 15/98/G.Edn. dated 16.1.1997 ordered that the management of aided School shall give employment to dependents of School Teachers/non teaching staff dying in harness. Further it is also stated that there is no restriction in Rule 9 A Chapter XXIV A of K.E.R. with regard to the employees who opted Chapter XXIV B of K.E.R. Government also took the view that the Government Order dated 16.1.1997 was issued to ensure that the dependents of all staff of aided Schools, who die while in harness, are given employment under compassionate employment

scheme by the appointing authority.

3. Learned single Judge allowed the Original Petition holding that the distinction between Chapter XXIV A and B is only in so far as the age of retirement and retirement benefits and that a member of non-teaching staff governed by Chapter XXIV B continues to be governed by the provisions of the K.E.R. and that the intention of Rule 9 A of Chapter XXIV A of K.E.R. being extension of the benefit of compassionate appointment to those covered by the K.E.R., for the only reason that the person who died while in service was an optee under Chapter XXIV B, the benefit of compassionate appointment cannot be denied. According to the learned single Judge, interpretation to the contrary would also lead to the Rule being held to be unconstitutional. On this reasoning, learned single Judge declared that the application of the first respondent cannot be rejected on the only ground that his father was governed by Chapter XXIV B of K.E.R. Aggrieved by the same the third respondent – Manager has filed this appeal.

4. Counsel for the appellant has contended that though Chapter XXIV A of K.E.R. was introduced as early as in 1959, Rule 9 A providing for compassionate appointment to the dependents of non-teaching staff of aided School was inserted by G.O.(P)

No.55/19/G.Edn. dated 30.3.1990 only. According to him, the operation of Rule 9 A is confined to Chapter XXIV A and this is evident from the fact that at the time of insertion of the said Rule, though Chapter XXIV B was in the statute book right from 1965, similar Rule has not been introduced in Chapter XXIV B of K.E.R. He would contend that the interpretation of the learned single Judge is erroneous in as much as by a process of interpretation, court cannot venture into legislation, especially when the legislature has chosen to exclude the benefit of compassionate appointment to those governed by Chapter XXIV B of K.E.R. It is further contended that the provisions of Chapter XXIV B of K.E.R. are beneficial to its optees in as much as they could continue till 60 years while those governed by Chapter XXIV A of K.E.R. are entitled to continue only upto 55 years. On this basis, he would contend that since those governed by Chapter XXIV B of K.E.R. are having longer service, legislature would have deliberately omitted to provide the benefit of compassionate appointment to them while confining the same to those who are governed by Chapter XXIV A of K.E.R., who can continue only till 55 years. Counsel for the first respondent supported the judgment and the learned Government Pleader also reiterated his submissions based on the counter affidavit filed in the Original Petition.

5. We have considered the submissions made by counsel on either side. As we have already noticed, initially Rules were contained in Chapter XXIV and the same was renumbered as Chapter XXIV A with effect from 1965 and Chapter XXIV B was also inserted in the statute book with effect from the same date. On going through the provisions contained in Chapters XXIV A and B of K.E.R., we notice that essential difference between the two is only in the matter of retirement age and the retirement benefits. While those who are governed by Chapter XXIV A are to retire at the age 60 years, non-teaching staff of aided school governed by Chapter XXIV B will retire at the age of 55 years. Even inspite of introduction of Chapter XXIV B in the statute book, non-teaching staff including those governed by the said Chapter, continued to be governed by the provisions of K.E.R. In this view of the matter, we are not inclined to accept the contention of the learned counsel for the appellant that since Rule 9 A occurs only in Chapter XXIV A, non-teaching staff governed by Chapter XXIV B of K.E.R. are not entitled to the benefit thereof.

6. In the affidavit filed by the Government in this case, it has been clarified beyond doubt that the intention of introducing Rule 9A was not to confine its applicability to those governed by Chapter XXIV A of K.E.R. alone. This is also evident from what is stated in S.R.O.

484/90 introducing Rule 9 A under Chapter XXIV A, which stated that dependents of Government employees, who died harness are being appointed in Government service and that there was no provision in the K.E.R. for appointing dependents of non-teaching staff of aided schools, who died in harness and that the amendment was intended to incorporate necessary provisions in the K.E.R. We also notice that the Government have later issued G.O(MS) No.15/97/G.Edn. Dated 16.1.1997, by which the Government vacated the stay ordered against the operation of Rule 51 B Chapter XIV A and Rule 9 A Chapter XXIV A of K.E.R. The said order provides thus: "The Managers of aided Schools shall give employment to dependents of aided School teachers/non-teaching staff of aided Schools dying in harness. The Government orders relating to the compassionate Employment Scheme as applicable to the dependents of Government servants dying in harness shall, mutatis mutandis, be followed in the aided schools."

7. The order further provides that if the Managers of aided Schools fails to carry out his obligation, the Educational Officer shall have the power to deny approval of such appointments, which are made against the Rules. As rightly pointed out in the counter affidavit filed by the Government the intention of the Rule was not to confine its applicability to those governed by Chapter XXIV B of K.E.R.

8. In our view, in a situation like this, the court will be justified in adopting a purposive interpretation, which will subserve the intention of the Legislature. In this context, we feel it relevant to extract the judgment of the Apex Court in **National Insurance Co. Ltd.** v. **Laxmi Narain Dhut** – 2007(3) S.C.C. 700, where it has been held as follows:

> "A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the Court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is

actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problem before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See – **District Mining Officer and Other**s v. **Tata Iron & Steel Co. and Another**, JT 2001(6) SC 183). It is also well settled that to arrive at the intention of the legislation depending on the objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual interpretation aside."

9. Even otherwise, we are afraid, that if the argument of the learned counsel for the appellant is accepted, not only that it will lead

to absurd results which we have to avoid, but also that it will expose the Rules to be hit by Article 14 of the Constitution. As we have already noticed, despite the introduction of Chapter XXIV B of K.E.R. in the statute book, non-teaching staff of aided Schools, except for difference in their age of retirement and retirement benefits, continued to belong to a class. While so, that Rule 9 A was inserted in Chapter XXIV A introducing appointment on compassionate grounds in addition to the benefits that were already extended to non-teaching staff of the aided Schools. In the matter of compassionate appointment alone, if a group of non-teaching staff, who belong to the same class, are taken to be excluded from operation of the Rule, such Rule could be hit by the equality clause contained in Article 14 of the Constitution. The other contention that those governed by Chapter XXIV B are entitled to continue in service till 60 years and that the longer service so provided could be the reason for denying them the benefit of compassionate appointment, also does not appeal to us as it is factually erroneous. As is evident from Rule 2 of Chapter XXIVA, the non teaching staff governed by the said Rule are entitled to continue in service till 60 years, unlike those governed by Chapter XXIV B, who are to retire on attaining 55 years. Therefore, it is quite improbable to think that the legislature wanted to confer double benefit to one

section of the non-teaching staff of aided schools alone. This lends support to our conclusion that those governed by Chapter XXIV B are also entitled to the benefit of Rule 9A, Chapter XXIV A of K.E.R.

10. Viewed from all angles, we are inclined to hold that the benefit of Rule 9 A Chapter XXIV A is available to dependents of non-teaching staff governed by Chapter XXIV B as well. In this view of the matter, we hold that learned single Judge was right in granting reliefs to the petitioner and the appeal lacks merit and is only to be dismissed and we do so.

K.S.Radhakrishnan,
Judge.

Antony Dominic,
Judge.

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